

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

JOSEPH A. ESPARZA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:18-cv-01271-TWP-MPB
	)	
PLATZ,	)	
IPPLE,	)	
MULLEN,	)	
PERKINS,	)	
CORIZON MEDICAL CARE,	)	
WEXFORD MEDICAL,	)	
	)	
Defendants.	)	

**Entry Dismissing Complaint and Directing Filing of Amended Complaint**

**I. Screening Standard**

Plaintiff Joseph A. Esparza is an Indiana state prisoner confined at the New Castle Correctional Facility. He alleges that his medical providers have been deliberately indifferent to his serious medical needs. Because the plaintiff is a “prisoner” as defined by 28 U.S.C. § 1915(h), this Court has an obligation under 28 U.S.C. § 1915A(b) to screen his complaint before service on the defendants. Pursuant to 28 U.S.C. § 1915A(b), the Court must dismiss the complaint if it is frivolous or malicious, fails to state a claim for relief, or seeks monetary relief against a defendant who is immune from such relief. In determining whether the complaint states a claim, the Court applies the same standard as when addressing a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). *See Lagerstrom v. Kingston*, 463 F.3d 621, 624 (7th Cir. 2006). To survive dismissal,

[the] complaint must contain sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face. A claim has facial plausibility when

the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

To state a cognizable claim under the federal notice pleading system, the plaintiff is required to provide a “short and plain statement of the claim showing that [he] is entitled to relief[.]” Fed. R. Civ. P. 8(a)(2). It is not necessary for the plaintiff to plead specific facts, and his statement need only “give the defendant fair notice of what the ... claim is and the grounds upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)); see *Christopher v. Buss*, 384 F.3d 879, 881 (7th Cir. 2004). However, a complaint that offers “labels and conclusions” or “formulaic recitation of the elements of a cause of action will not do.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555). The complaint allegations “must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555; *Christopher*, 384 F.3d at 881.

Pro se complaints such as that filed by the plaintiff are construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers. *Obriecht v. Raemisch*, 517 F.3d 489, 491 n.2 (7th Cir. 2008).

## **II. Dismissal of Complaint**

### **A. Statute of Limitations**

The complaint is brought pursuant to 42 U.S.C. § 1983. To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution or laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). Suits under § 1983 use the statute of limitations and tolling rules that states employ for personal-injury claims. In Indiana, the applicable statute of

limitations period is two years. *See Richards v. Mitcheff*, 696 F.3d 635, 637 (7th Cir. 2012); Ind. Code § 34–11–2–4.

This action was signed on April 19, 2018, and filed on April 26, 2018. Accordingly, claims which accrued before April 19, 2016, are barred by Indiana’s 2-year statute of limitations. “It is, of course, ‘irregular’ to dismiss a claim as untimely under Rule 12(b)(6). . . . However, . . . dismissal under Rule 12(b)(6) on the basis of a limitations defense may be appropriate when the plaintiff effectively pleads [himself] out of court by alleging facts that are sufficient to establish the defense.” *Hollander v. Brown*, 457 F.3d 688, 691 n.1 (7th Cir. 2006) (internal citations omitted); *see also Koch v. Gregory*, 536 Fed. Appx. 659 (7th Cir. 2013) (stating that when the language of the complaint plainly shows that the statute of limitations bars the suit, dismissal under § 1915A is appropriate); *Brownmark Films, LLC v. Comedy Partners*, 682 F.3d 687, 690 (7th Cir. 2012).

This means that claims based on a March 2013 car accident, a 2013 “scope for Barits”, an X-ray delayed until March 2016, and immobility caused by back pain which occurred in 2014, are dismissed as barred by the statute of limitations.

## **B. Deliberate Indifference**

Prison officials violate the Eighth Amendment when they are deliberately indifferent to the serious medical needs of prisoners. *Estelle v. Gamble*, 429 U.S. 97, 104 (1976). To establish a deliberate-indifference claim, a prisoner must demonstrate both that his medical condition is “objectively” serious and that the officials acted with a “sufficiently culpable state of mind.” *Farmer v. Brennan*, 511 U.S. 825, 834–35, (1994). “[A] prison official cannot be found liable under the Eighth Amendment ... unless the official knows of and disregards an excessive risk to inmate health or safety.” *Id.* at 837.

The difficulty with the complaint is that it combines all of the plaintiff's disagreements with his medical care over the course of many years and in many cases names the defendants generally. This is insufficient to "give the defendant fair notice of what the ... claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). For example, the plaintiff writes:

On 08/28/2016 I suffered a Stroke/Balpalsy (failed to medicate?) that cause irreparable harm leaving me with permanent disfigurement to my eye and ear and mouth after I informed them in July, August and September 2016 and now due to the incorrect record keeping to intentionally ignore my conditions Defendants left me at great risk of medical catastrophe and this catastrophe prevailed.

Complaint, dkt. 1 at page 2. This paragraph is just one example of a claim that requires both the Court and individual defendants to speculate regarding the plaintiff's theory of liability and the factual basis upon which that theory rests. There is no allegation regarding any individual's actions that would suggest deliberate indifference to the plaintiff's serious medical needs. Because the Complaint fails to give the individual defendants fair notice of what the ... claim is and the grounds upon which it rests, the Complaint must be dismissed.

### **III. Opportunity to File Amended Complaint**

The dismissal of the complaint will not in this instance lead to the dismissal of the action at present. Instead, the plaintiff shall have **through July 18, 2018** in which **to file an amended complaint**.

In filing an amended complaint, the plaintiff shall conform to the following guidelines: (a) the amended complaint shall comply with the requirement of Rule 8(a)(2) of the *Federal Rules of Civil Procedure* that pleadings contain "a short and plain statement of the claim showing that the pleader is entitled to relief. . . .," which is sufficient to provide the defendant with "fair notice" of the claim and its basis. *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (per curiam) (citing *Bell Atl.*

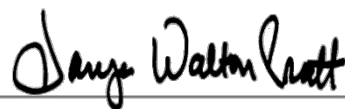
*Corp. v. Twombly*, 550 U.S. 544, 555 (2007) and quoting Fed. R. Civ. P. 8(a)(2)); (b) the amended complaint must include a demand for the relief sought; and (c) the amended complaint must identify what legal injury they claim to have suffered and what persons are responsible for each such legal injury. The plaintiff must state his claims “in numbered paragraphs, each limited as far as practicable to a single set of circumstances.” Fed. R. Civ. P. 10(b). The plaintiff is further notified that “[u]nrelated claims against different defendants belong in different suits.” *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007).

In organizing his complaint, the plaintiff may benefit from utilizing the Court’s complaint form. The **clerk is directed** to include a copy of the prisoner civil rights complaint form along with the plaintiff’s copy of this Entry.

Any amended complaint should have the proper case number, 1:18-cv-1271-TWP-MPB and the words “Amended Complaint” on the first page. If an amended complaint is filed as directed above, it will be screened. If no amended complaint is filed, this action will be dismissed for the reasons set forth above.

**IT IS SO ORDERED.**

Date: 6/18/2018



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TANYA WALTON PRATT, JUDGE  
United States District Court  
Southern District of Indiana

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